IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15/09/2004

CORAM

THE HONOURABLE MR. JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR. JUSTICE F.M.IBRAHIM KALIFULLA

W.P. NO. 25770 OF 2004
AND
W.P.M.P. NO. 31324 OF 2004

P. Kalidass .. Petitioner

-Vs-

1. Central Board of Film Certification
rep. by its Regional Officer
Shastri Bhawan, Chennai.

2. The Chairman
Revising Committee
Shastri Bhawan, Chennai.

3. Union of India
rep. by Chairman
Central Board of Film Certification
Mumbai.

4. Cee (I) TV Entertainment Limited
rep. By Mr.Murali Manohar
9A, Gee Gee Emerald
312, Valluvar Kottam High Road
Nungambakkam
Chennai 600 031.

5. Mr. Maharajan .. Respondents

Writ Petition preferred under Article 226 of The Constitution of India praying this Court to issue a Writ of Mandamus as stated therein.

For Appellant : Mr. N.Raja Senthoor Pandian

For Respondents : Mr. N.Manikumar, SCGSC, for RR1 to 3
Mr. Satish Parasaran, for R4
Mr. P.S.Raman, SC, for
Mr. S.Ramesh, for R5

:ORDER
(ORDER OF THE COURT WAS MADE BY N.DHINAKAR, J.)
The petitioner, a pro-bono public, has filed the above writ petition with a prayer to direct the third respondent to withdraw the certificate issued to the film "Arasatchi" and a total ban on the production, exhibition and screening of the said film in any form.

2. According to the petitioner, who claims to be an advocate, the film "Arasatchi" is about a story of an youngster, who kills about nine persons, who are practising as advocates in criminal matters and the theme of the story is that instead of giving grave punishments to the real culprits, the advocates, who exercise only their right and perform their legal duties were being punished. The petitioner further submits that he came to know that nine members out of the ten members of the revising committee had objected and cuts were imposed throughout the film and one member of the revising committee had given a very serious objection and even asked for the total ban of the film since it diverts the opinion of the public against the judiciary. According to the petitioner, the 4th respondent sent the above film to the 3rd respondent for review and that the film is to be released on 10.9.04 from which he had come to know that the 4th respondent had obtained a certificate from the 3rd respondent to release the film.

3. The petitioner has further alleged that the 5th respondent had given an interview to a weekly magazine justifying his act in directing the film. He has further stated that he has not produced the film against advocates and has sent a message that judiciary alone could protect the country and at the same time the hero kills those advocates, who are helping criminals to stay freely in society knowing fully well that they are criminals and if helping criminals is their will and wish, then eliminating (killing advocates) is also the will and wish of the hero. The 5th respondent has further stated in the interview that some issues are to be seen as per law and some issues as per ethics.

4. When the matter was initially listed, the 4th respondent undertook before this Court that the wordings "when justice fails" found in the hoardings in the film "Arasatchi" will be removed and that now we are informed that the said words have been removed.

5. The learned counsel appearing for the petitioner submits that in view of the interview given by the 5th respondent and in view of the theme of the film, the 5th respondent has attempted to denigrate not only the judiciary, but also the advocates, appear for criminals and, therefore, the 3rd respondent should revoke the certificate issued.

6. We have considered the contentions and perused the affidavit filed in support of the petition and even at the outset we may say that this petition could never attract the criteria laid down by the Supreme Court regarding Public Interest Litigation.

7. In BALCO EMPLOYEES' UNION (REGD.) VS. UNION OF INDIA AND OTHERS (2002 (2) SCC 333), the Supreme Court held that PIL is not a pill or a panacea

for all wrongs. It was essentially meant to protect basic human rights of the weak and the disadvantaged and was a procedure which was innovated where a public-spirited person files a petition in effect on behalf of such persons who on account of poverty, helplessness or economic and social disabilities could not approach the court for relief and that there have been, in recent times, increasingly instances of abuse of PIL and there is need to re-emphasize the parameters within which PIL can be resorted to by a petitioner and entertained by the court. The Supreme Court quoted with approval the observations made in S.P.Gupta Vs. Union of India (1981 Supp. SCC 87) wherein it was observed that there are certain dangers in PIL which the court has to be careful to avoid and it is necessary for the court to bear in mind that there is vital distinction between locus standi and justiciability and it is not every default on the part of the State or a public authority that is justiciable. The court must take care to see that it does not overstep the limits of its judicial function and trespass into areas which are reserved to the executive and the legislature by the Constitution and it is a fascinating exercise for the court to deal with public interest litigation because it is a new jurisprudence which the court is evolving, a jurisprudence which demands judicial statesmanship and high creative ability.

8. The Supreme Court further quoted with approval the following passage of the Supreme Court in an earlier judgment in Janata Dal Vs. H. S.Chowdhary (1992 (4) SCC 305) :-

"[T]he busybodies, meddlesome, interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either for themselves or as proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffling their faces by wearing the mask of public interest litigation, and get into the courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the courts and as a result of which the queue standing outside the doors of the court never moves which piquant situation creates a frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system."

Ultimately the Supreme Court held that whenever the Court has interfered and given directions while entertaining PIL, it has mainly been where there has been an element of violation of Article 21 or of human rights or where the litigation has been initiated for the benefit of the poor and the underprivileged who are unable to come to court due to some disadvantage. In those cases also, it is the legal rights, which are secured by the courts. Further the Supreme Court observed that public interest litigation was meant to be a weapon to challenge the financial or economic decisions which are taken by the Government in exercise of their administrative power and that no doubt a person personally aggrieved by any such decision, which he regards as illegal, can impugn the same in a court of law, but a public interest litigation at the behest of a stranger ought not to be entertained. Such litigations cannot per se be on behalf of the poor and the downtrodden, unless the court is satisfied that there has been violation of Article 21 and the persons adversely affected are unable to approach the court.

9. In ASHOK KUMAR PANDEY VS. STATE OF W.B. (2004 (3) SCC 349), the Supreme Court held that when there is material to show that a petition styled

as a public interest litigation is nothing but a camouflage to foster personal disputes, the said petition is to be thrown out. The Supreme Court considered the issue regarding public interest aspect. It has observed that public interest litigation should not be " publicity interest litigation" or "private interest litigation" or " politics interest litigation" or the latest trend "paise income litigation" and that if not properly regulated and abuse averted it also becomes a tool in unscrupulous hands to release vendetta and wreak vengeance as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of a knight errant or poke one's nose into for a probe and that it cannot be invoked by a person or a body of persons to further his or their personal causes or satisfy his or her personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction and that the person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration.

10. The Supreme Court went on to observe that court must not allow its process to be abused for oblique considerations and that when a person come to the court under the guise of filing a PIL actuated by a desire to win notoriety or cheap popularity, the petitions of such busybodies deserve to be thrown out by rejection at the threshold and in appropriate cases with exemplary costs. The Supreme Court further held that time had come to weed out the petitions, which though titled as PIL are in essence something else and it is shocking to note that courts are flooded with a large number of so-called public interest litigations where even a minuscule percentage can legitimately be called public interest litigations, though the parameters of public interest litigation have been indicated by the Supreme Court in a large number of cases, yet unmindful of the real intentions and objectives courts are entertaining such petitions and wasting valuable judicial time, which could be otherwise utilised for disposal of genuine cases. The Supreme Court further held that whenever such frivolous pleas are taken to explain possession, the courts should do well not only to dismiss the petitions but also to impose exemplary costs and it will be desirable for the court to filter out the frivolous petitions and dismiss them with costs as aforestated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts.

11. Keeping the above principles in mind, we have to analyse the present petition. We are unable to accept that the said petition is filed in the interest of public. The interview given by the 5th respondent also makes it clear that the film was produced more as an entertainment for the public and by no stretch of imagination it could be considered that the intention of

the 5th respondent is to paint the advocates in poor light as if they are appearing for criminals and to defend them, knowing fully well that they have committed a crime.

12. It is to be remembered that every advocate is well aware of his

duties and responsibilities and if a litigant approaches the advocate for legal assistance, then it is the duty of the advocate to render that legal assistance and that he cannot deny the said legal assistance even if it is within his knowledge that the person, who seeks legal remedy, has committed the offence. In fact, an advocate has immunity under Section 126 of The Evidence Act, which mandates that no barrister, attorney, pleader or vakil shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment. Therefore, it is clear that any information that an advocate receives from his client need not be disclosed by him and merely because he appears for a criminal, who is accused of an offence, it cannot be said that the advocate has committed wrong since the said act of appearing or defending a person accused of a crime is in the course of his professional duty. Thus, by no stretch of imagination it could be stated that by releasing the film the 5th respondent want to project the advocates as persons, who are abetting or aiding the criminals by appearing on their behalf and, therefore, they have to be killed. The facts also show that the 3rd respondent after considering all the aspects had given a certificate for the screening of the film and this court is not going to sit in appeal over the decision of the 3rd respondent in granting the certificate.

13. As we stated earlier, the petition lacks bona fide and we do not find that the said petition has been filed in the interest of public. The petitioner, merely claiming to be an advocate, cannot approach this Court by filing the above petition stating that he has filed the present petition in the interest of public on the ground that the film tarnishes the image of the advocates. Since we do not find any genuine cause or reason for the petitioner to have filed the above petition, and since in our view the above petition is not in the interest of public, we cannot but dismiss the said petition and, accordingly, it is dismissed.

14. While dismissing the writ petition, we have to keep in mind the principles laid down by the Supreme Court, which we have extracted above as regards the costs to be imposed on frivolous and fictitious petitions. Though in our view we will be justified in imposing a cost of Rs.50,000/= on the petitioner for coming out with the above frivolous petition, we do not propose to do so taking into consideration the submission of the counsel for the petitioner that the petitioner has joined the Bar only very recently and is earning only a sum of about Rs.500/= per month. The petitioner, who is also present in court, pleads for leniency and submits that in future he will not indulge in such misadventures and that he may be let off without any costs. Taking the above facts into consideration, though as we stated earlier this is a case where a cost of Rs.50,000/= has to be imposed, we feel that the petitioner could be severely warned not to file such frivolous petitions in future and, accordingly, he is severely warned.

15. In the result, the writ petition is dismissed with the above

observations. Consequently, connected miscellaneous petition is also dismissed.

Index : Yes
Internet : Yes

GLN

To
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Central Board of Film Certification
Shastri Bhawan, Chennai.

2. The Chairman
Revising Committee
Shastri Bhawan, Chennai.

3. The Chairman
Central Board of Film Certification
Mumbai.